

the interconnection agreement and the FMOD policy. Staff points out that the definition of available is subject to considerable potential disagreements. The Commission finds that the TDS language is reasonable and should be adopted. The Commission further finds that the parties should adopt the definition of "available" to be "A facility is considered available if the facility requested is located in an area presently (i.e., at the time at which a facility is requested) served by Ameritech Illinois," as found in Docket No. 99-0593, "Special Construction Order."

**Issue No. 4: (TDS-30) What limits should be put on TDS' use of UNE's?
(Appendix UNE, Section 2.9.8)**

A. TDS Position

TDS proposes striking the language put forth by Ameritech because it is overly broad and would place improper limits on TDS' use of UNEs. TDS notes for example, since Ameritech has tariffs for UNEs, the Ameritech language stating that a UNE cannot be combined with any tariffed offering would imply that TDS cannot combine a UNE that is in the agreement with one that was not listed in the agreement, but is provided for in the tariff.

Further, TDS argues that the language proposed by Ameritech is contrary to 47 C.F.R. 51.309(a), which provides that:

[a]n incumbent LEC shall not impose limitations, restrictions, or requirements on request for, or the use of, unbundled network elements that would impair the ability of a requesting telecommunications carrier to offer a telecommunications service in the manner the requesting telecommunications carrier intends.

According to TDS, Ameritech ignores the actual language of the agreement as disputed between the parties in order to make an unsupportable argument. TDS notes that the FCC has made a limitation that is designed to prevent UNE combinations from replacing tariffed access services. TDS further notes that from the very narrow limitation in the FCC rules prohibiting "loop-transport UNE combinations with tariffed services," Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, Supplemental Order Clarification, FCC 00-183 (rel. June 2, 2000) ("Supplemental Order Clarification") Ameritech leaps to unsupportable language that provides that all combinations of all UNEs and all tariffed services must be outlawed. TDS asserts the despite Ameritech's disingenuous statement that it only wishes the agreement to match the FCC order, the FCC order is strictly limited to loop transport combinations. TDS notes that the language proposed by Ameritech states : "Unbundled Network Elements may not be connected to or combined with SBC-13STATE access services or other SBC-13STATE tariffed service offerings" TDS argues that this goes far beyond the limited prohibition in the FCC rule.

(a "Request"), that is required to be provided by SBC-AMERITECH under the Act but is not available under this Agreement or defined in a generic appendix at the time of CLEC's request." Staff cannot envision how Ameritech could be required to provide something under the Act when it has not been defined yet. As soon as either the FCC or this Commission defines a new UNE, TDS should be able to order such UNE without going through a BFR process. Once it has been defined as a UNE, it is an existing UNE and no BFR process should be necessary to order it. Staff is aware that Section 2.2.9 of Appendix UNE states that in the event the FCC or this Commission changes the list of required unbundled network elements; the parties shall make the necessary revisions to this Appendix. Staff argues that TDS should not be required to order a newly defined UNE through the BFR process until such time the parties agree on language for a new Appendix.

Staff notes that it indicated during the Special Construction proceeding, the BFR process has important anti-competitive effects. Staff notes that it requires a CLEC to come up with a \$2,000 deposit or agree to promptly pay the total preliminary evaluation costs incurred and invoiced by Ameritech and these costs may be a barrier to entry. Staff asserts that the BFR process can also lead to delays in provisioning service. Staff notes that Ameritech may take up to 90 days just to quote a price for special construction. Thus, it is important that the BFR process only be applied in instances where TDS requests a network element that Ameritech is not legally required to provide.

D. Commission Analysis and Conclusion

The instant case presents a slightly different context than previously considered by the Commission in SCC in that TDS refers to the existing FMOD policy and clarifies the scope of the BFR process. As correctly noted by Staff, the BFR process has certain anti-competitive elements to it and it is important that the BFR process be applied in instances where requests are made for a UNE that Ameritech is not legally required to provide or a UNE that may be legally required by the Act, but not recognized by the FCC or the Commission. Contrary to the arguments made by Ameritech this conclusion is not inconsistent with the decision in SCC. The language proposed by TDS is consistent with the original language proposed by Ameritech and clarifies that the BFR policy is to be used in its original context and does not alter the FMOD process as previously discussed. The Commission concludes that the language proposed by TDS is reasonable, and is therefore accepted.

Issue No. 15: (TDS-58) What should be done if a party is unable to perform Acceptance Tests? (Appendix ITR, Section 8.8)

A. TDS Position

TDS objects to language proposed by Ameritech that states that if the test is not rescheduled in 7 days, the ASR will be canceled.

D. Commission Analysis and Conclusion

The Commission agrees that Ameritech's proposal is premature and the Ameritech language is not adopted. ~~If work requested by TDS proves to be unnecessary because the TDS request was inaccurate, TDS should compensate Ameritech. If, on the other, one source of an inaccurate request is based on inaccurate Ameritech information, Ameritech should not be entitled to recover.~~

Issue No. 30: (TDS-144) How are orders over TELIS handled? (Appendix NP, Section 3.4.7)

A. TDS Position

TDS notes that Ameritech has stated that the problems related to the multiple submissions related to orders over TELIS will be rectified by the new electronic data interchange ("EDI") process. What Ameritech has failed to do is to make any commitment to that process in the agreement. TDS asserts that Ameritech has been promising to replace TELIS for years. While TDS is attempting to move to an EDI standard with Ameritech, so long as the TELIS process remains in place, it will still be subject to the same problems as noted by TDS that the process is redundant and inefficient. Therefore, the language proposed by TDS should be awarded for this issue.

B. Ameritech Position

Ameritech notes that the Commission may wonder why TDS is seeking to modify Ameritech's OSS ordering interfaces in this proceeding. After all, the Commission supervised a lengthy collaborative to address improvements to OSS, and it has almost completed an extensive docket (No. 00-0592) to resolve any remaining issues from that collaborative. Why, then, wasn't TDS' present concern raised and resolved in the OSS docket? The answer is that the issue raised by TDS was resolved – twice – in the OSS collaborative, and TDS' present position is baseless.

Ameritech notes that TDS seeks to modify an interface called Telis so that TDS can place Access Service Requests for PNP along with the request for the associated loop. Ameritech explains that Telis is a non-standard electronic interface that was originally used by long-distance carriers to place "Access Service Requests" with Ameritech. When the 1996 Act became law, some CLECs at first submitted Access Service Requests via Telis to order unbundled loops. Subsequently, the industry standard format, known as EDI, evolved to support loop requests. When Ameritech implemented permanent number portability ("PNP"; also known as long-term number portability or "LNP"), it followed the industry standard and modified its EDI interface to support requests for PNP. Loop requests, PNP requests, and other service requests submitted over EDI are called "Local Service Requests."

Ameritech notes that with the implementation of version 4 of the Local Service Ordering Guide in March 2001, the EDI interface supports integrated Local Service

Ameritech argues that it is entitled to tell TDS that it must accept Ameritech's terms for OS or find another OS provider. With respect to OS, Ameritech and TDS are in the same relationship as any prospective seller and any prospective buyer, dealing with each other in a competitive market Ameritech can insist that TDS agree to the OS terms that Ameritech is proposing. Ameritech states that it is insisting on certain provision: If TDS is unwilling to accept Appendix OS in the form that Ameritech is offering, there will be no Appendix OS in this Agreement, and TDS needs to find another provider.

Ameritech argues that the parties' disagreements about Appendix OS have nothing to do with anything the 1996 Act requires, and therefore are not within this Commission's jurisdiction under the 1996 Act. Ameritech also argues that the jurisdictional point can never be waived; a tribunal either has jurisdiction over a subject or it does not, and a party cannot waive an objection to subject matter jurisdiction. *E.g., Levin v. A.R.D.C*, 74 F.3d 763, 766 (7th Cir. 1996) ("Subject-matter jurisdiction cannot be waived and may be contested by a party or raised *sua sponte* at any point in the proceedings"); *Fredman Bros. Furniture Co. v. Dept. of Revenue*, 109 Ill.2d 202, 214, 486 N.E.2d 893, 898 (1985) ("lack of subject matter jurisdiction can be raised at any time, in any court, either directly or collaterally"). Finally, Ameritech argues that with respect to the substantive point – *i.e.*, that Ameritech is entitled to insist on its own terms for OS because it has no duty to provide OS – there is no doctrine of law or equity that would support the notion that Ameritech cannot insist on those terms now merely because it did not do so before.

C. Staff Position

Staff did not take a position on this issue.

D. Commission Analysis and Conclusion

The Commission agrees that operator service is a competitive service and should be provided at terms and rates negotiated in the open market. There is no evidence that TDS has been coerced into obtaining operator service from Ameritech or that Ameritech is obligated to provide operator service to TDS. The Commission adopts Ameritech's proposed language for Appendix OS, Sections 8.1 and 13.2.

Issue No. 33: (TDS-158) Must CLEC provide a portion of signaling links? (Appendix SS7, Section 2.5)

A. TDS Position

TDS proposes that it be allowed to provide trunking over the joint Synchronous Optical Network ("SONET") as it has been permitted to in the past and in a manner consistent with Section 3.4.2 of the NIM Appendix to this agreement. Section 3.4.2 of Appendix NIM states:

test and move on to serve other CLECs and end users. Ameritech has proposed a time limit of 10 minutes; TDS does not contend that 10 minutes are not enough and it does not propose an alternative. Instead, again according to Ameritech it wants no limit on the amount of time it can hold technicians, CLECs and end users hostage, and thus make the test for one loop delay the completion of all others.

Ameritech does not doubt that TDS "will make every effort to complete the testing as scheduled since it is in TDS Metrocom's best interest to make sure that the loops being delivered are adequate for TDS Metrocom needs." But other CLECs and end users should not be forced to wait if TDS' efforts prove insufficient. Rather, TDS must bear the burden of its own delays.

C. Staff Position

Staff feels that Acceptance Testing should be performed as requested by the CLEC. However, the issue as set forth in Appendix DSL, Section 8.3.5 becomes: "how long should a technician have to wait for someone to either initially answer the phone or answer the phone after being placed on hold?" Staff recommends that this issue be addressed in the six-month review of the SBC/Ameritech Wholesale Performance Plan, which is currently underway.

D. Commission Analysis and Conclusion

The Commission finds that both parties' time is valuable and that both parties should be held to the same standard of response in this situation. Since there is no agreement, the Ameritech proposal is deleted.

The Commission agrees with Staff's recommendation that this issue be addressed in the six-month review of the SBC/Ameritech Wholesale Performance Plan and directs that this issue be included in that review.

Issue No. 38: (TDS-201) What should Ameritech repair at no charge to TDS? (Appendix DSL, Section 9.4)

A. TDS Position

The language proposed by TDS provides that Ameritech should repair any defects which would be unacceptable for POTS or which result from conditioning or other work performed by Ameritech. TDS asserts that the language proposed by Ameritech would shield Ameritech from responsibility for any work performed, even if it performed the work incorrectly. Ameritech attempts to twist the meaning of the word "defect" to try to say that TDS could try to have Ameritech do some type of repair, even if Ameritech had done the original work correctly. TDS argues that this is an assault on the plain meaning of the word. TDS asserts that the very definition of the term "defect" indicates that something was not performed correctly. TDS notes that there is no other provision in the contract which would require Ameritech to repair incorrectly performed